

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## JAMES ERNEST DICKERSON,

**Petitioner,**

v.

CAROL PORTER,

## Respondent.

Case No. C05-5793RJB

## ORDER

This matter comes before the Court upon Petitioner's Motion to Dismiss 1992 Conviction (Dkt. 100), Petitioner's Motion of Intent to file Writ Amicus Curiae (Dkt. 102), Petitioner's Motion to Seeking Indictments (Dkt. 103), Petitioner's Motion for Issuance of Subpoena (Dkt. 105), Petitioner's Motion to Continue (Dkt. 106), Petitioner's Motion to File Writ of De Exemplificatione (Dkt. 108), Petitioner's Motion for Expert Testimony (Dkt. 109), Petitioner's Motion to File Abuse of Process Tort (Dkt. 112), Petitioner's Motion for a Hearing (Dkt. 113), Petitioner's Motion to Amend (Dkt. 114), and Petitioner's Motion for a Certificate of Appealability (Dkt. 118). The Court has reviewed the pleadings filed in support of and in opposition to these motions and the remaining record.

1

11

ORDER - 1

1       **I.       VARIOUS MOTIONS DOCKETED AFTER ADOPTION OF REPORT AND**  
2       **RECOMMENDATION**

3           On June 1, 2006, U.S. Magistrate Judge J. Kelley Arnold recommended dismissal of the  
4       petition with prejudice as time barred pursuant to the Antiterrorism and Effective Death Penalty  
5       Act's ("AEDPA") Section 2244(d)(1). Dkt. 85-1. Review of the relevant record and the Report and  
6       Recommendation reveals that this petition is time barred and that no exceptions apply. Accordingly,  
7       the Report and Recommendation was adopted on July 31, 2006. Dkt. 99.

8           On August 4, 2006, the Clerk of the Court docketed Petitioner's Motion to Dismiss 1992  
9       Conviction, filed by Petitioner on July 26, 2006. Dkt. 100. On July 31, 2006, the same day the  
10      Report and Recommendation was adopted, Petitioner filed, by mail, the following motions:  
11      Petitioner's Motion of Intent to file Writ Amicus Curiae (Dkt. 102), Petitioner's Motion to Seeking  
12      Indictments (Dkt. 103), Petitioner's Motion for Issuance of Subpoena (Dkt. 105), Petitioner's  
13      Motion to Continue (Dkt. 106), Petitioner's Motion to File Writ of De Exemplificatione (Dkt. 108),  
14      and Petitioner's Motion for Expert Testimony (Dkt.109). These motions were entered into the  
15      record after the Order Adopting Report and Recommendation. *Id.*

16           Each of these motions should be stricken as moot. Petitioner's Motion to Dismiss 1992  
17       Conviction (Dkt. 100), Motion to Seek Indictments (Dkt. 103), Motion for Issuance of Subpoena  
18       (Dkt. 105), Petitioner's Motion for a Continuance (Dkt. 106), Motion to File Writ of De  
19       Exemplificatione (Dkt. 108), and Motion for Expert Testimony (Dkt. 109) address matters in the  
20      petition, which has been found by this Court to be time barred. Petitioner's Motion of Intent to File  
21      a Writ of Amicae Curie (Dkt. 102) is unrelated to the petition filed in this Court, and should be  
22      stricken as moot.

23           On August 4, 2006, Petitioner filed a Motion to File Abuse of Process Tort (Dkt. 112), a  
24       Motion for a Hearing (Dkt. 113), and a Motion to Amend (Dkt. 114). These motions should  
25       similarly be stricken as moot because they are largely unrelated to the petition that was before this  
26       Court. To the extent that they are related, they should be stricken as moot because the petition is  
27       time barred.

1           **II. CERTIFICATE OF APPEALABILITY**

2           **A. STANDARD FOR GRANTING A CERTIFICATE OF**  
             **APPEALABILITY**

3           The district court should grant an application for a Certificate of Appealability only if the  
         4 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
         5 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(C), a habeas petitioner  
         6 must make a showing that reasonable jurists could debate whether, or agree that, the petition should  
         7 have been resolved in a different manner or that the issues presented were adequate to deserve  
         8 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (*quoting*  
         9 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural  
 10 grounds, the petitioner must show that jurists of reason would find it debatable whether the petition  
 11 states a valid claim of the denial of a constitutional right and that jurists of reason would find it  
 12 debatable whether the district court was correct in its procedural ruling. *Slack* at 1604.

13           **B. CERTIFICATE OF APPEALABILITY**

14           This petition was dismissed on procedural grounds. Dkt. 99. There is nothing in the record  
         15 that would support a conclusion that a jurist of reason would find it debatable whether the petition  
         16 states a valid claim of the denial of a constitutional right and that jurist of reason would find it  
         17 debatable whether this court was correct in its procedural ruling. *Slack* at 1604. Petitioner’s Motion  
         18 for a Certificate of Appealability should be denied.

19           **III. FUTURE MOTIONS**

20           The Court notes that Petitioner has been cautioned regarding the filing of frivolous motions.  
         21 *See* Dkts. 85 and 94. When this Court adopted the June 1, 2006 Report and Recommendation  
         22 urging dismissal of the petition as time barred, it also had before it a July 10, 2006 Report and  
         23 Recommendation regarding two motions for protective orders filed with the Clerk of the Court the  
         24 day before the June 1, 2006 Report and Recommendation was entered, but not entered into the  
         25 record until after the June 1, 2006 Report and Recommendation was filed. Dkts. 85 and 94. The  
         26 July 10, 2006 Report and Recommendation properly noted that these motions deal with issues  
         27 unrelated to the petition currently before the Court. Dkt. 94. The July 10, 2006 Report and

1 Recommendation was adopted. Dkt. 99. Moreover, on July 24, 2006, Petitioner filed a Motion to  
2 Seeking Indictments (Dkt. 95), a Motion of Intent to File Writ Amicus Curiae (Dkt. 97), and a  
3 Motion to Subpoena (Dkt. 98). These motions were stricken as moot in light of the dismissal of the  
4 petition. Dkt. 99. Petitioner has continued his pattern. Accordingly, further motions by Petitioner  
5 in this case shall be docketed, but no action will be taken upon them.

6 **IV. ORDER**

7 Therefore, it is hereby **ORDERED**:

8 • Petitioner's Motion to Dismiss 1992 Conviction (Dkt. 100), Petitioner's Motion of  
9 Intent to file Writ Amicus Curiae (Dkt. 102), Petitioner's Motion to Seeking  
10 Indictments (Dkt. 103), Petitioner's Motion for Issuance of Subpoena (Dkt. 105),  
11 Petitioner's Motion to Continue (Dkt. 106), Petitioner's Motion to File Writ of De  
12 Exemplificatione (Dkt. 108), Petitioner's Motion for Expert Testimony (Dkt. 109),  
13 Petitioner's Motion to File Abuse of Process Tort (Dkt. 112), Petitioner's Motion for  
14 a Hearing (Dkt. 113), and Petitioner's Motion to Amend (Dkt. 114) are **STRICKEN**  
15 **AS MOOT.**

- 16 • Petitioner's Motion for a Certificate of Appealability (Dkt. 118) is **DENIED**.  
17 • Any further motions by Petitioner will be docketed in this case, but no further action  
18 will be taken on them.  
19 • The clerk is directed to send copies of this Order to Petitioner, counsel for Respondent, and  
20 to the Hon. J. Kelley Arnold.

21 DATED this 17<sup>th</sup> day of August, 2006.

22   
23 Robert J. Bryan  
24 United States District Judge  
25  
26  
27  
28